

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 24, 2004

IN RE:

**ADVISORY AND PETITION OF
NATIONAL A-1 ADVERTISING FOR
REASSIGNMENT OF N11 NUMBER CODE**

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**DOCKET NO.
04-00062**

**ORDER DENYING PETITION OF NATIONAL A-1 ADVERTISING, INC.
FOR USE OF 811 ABBREVIATED DIALING CODE AND
DENYING PETITION FOR RECONSIDERATION**

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on March 22, 2004. During that Conference, the panel considered and denied the Petition of National A-1 Advertising, Inc. ("National") for use of an 811 abbreviated dialing code. At an Authority Conference held on April 12, 2004, the panel considered and denied the *Petition for Reconsideration and Expedited Consideration* that was filed by National on March 24, 2004.

BACKGROUND

Allocation of 211 Code to National and Subsequent FCC Assignment of 211 Code

On April 6, 1999, in Docket No. 98-00554, the TRA allocated the 211 abbreviated dialing code in Knoxville, Nashville, Memphis, and Chattanooga to National, which was then doing business under the name of National Telephone Enterprises or NTE. The allocation of the 211 number to National was subject to recall from use on six months notice or by order of the Federal Communications Commissions ("FCC") or any requirement established by the

Administrator of the North American Numbering Plan Administration (NANPA).¹ National, since receiving permission from the TRA, has utilized the 211 number to administer a personal introduction service

On July 31, 2000, the FCC released its *Third Report and Order and Order on Reconsideration* in FCC 00-256 ("*Third Report and Order*") which assigned the abbreviated dialing code of 211 to information and referral service providers. The FCC's Order outlines the necessary steps that must be taken by telecommunications service providers upon receiving a 211 request.

[W]hen a provider of telecommunications services receives a request from an entity (e.g., the United Way) to use 211 for access to community information and referral services, the telecommunications provider must: (1) ensure that any entities that were using 211 at the local level prior to the effective date of this Order relinquish use of the code for non-compliant services, and (2) take any steps necessary (such as reprogramming switch software) to complete 211 calls from its subscribers to the requesting entity in its service area. . . . We expect community service organizations to work cooperatively to ensure the greatest public use of this scarce resource.²

The *Third Report and Order* also provides that the FCC, not NANPA or another entity, will continue to designate and assign N11 codes for nationwide use. Nevertheless, the FCC explicitly stated that local assignments could be made by the state commissions.

Once we assign or designate an N11 for national use, essentially all that remains to do is to implement that assignment and monitor the uses of the N11 codes. We

¹ See *In re Petition of National Telephone Enterprises for Allocation of an N11 Number (Abbreviated Dialing Code)*, Docket No. 98-00554, *Order Granting Allocation of N11 Abbreviated Dialing Code* (June 22, 1999). See also *BellSouth's General Subscriber Services Tariff*, Section A139.1.2D which states,

The Federal Communications Commission (FCC) has order[ed] that certain N11 numbers be assigned for national purposes and certain uses. As requests are submitted by qualifying entities for N11 numbers assigned for national use, inconsistent commercial uses of such numbers shall be discontinued according to the following provisions:

The N11 subscriber must, prior to provisioning of the service, sign a written acknowledgement of this condition and an agreement to return the code upon receipt of 6 months written notice of such a recall from the Company and abide by any subsequent rules which may be identified by the FCC in CC Docket 92-105 regarding the use and return of such N11 codes.

² *In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105 (*Third Report and Order and Order on Reconsideration*) 15 F.C.R. 16753, ¶ 21 (July 31, 2000) (hereinafter *Third Report and Order*).

do not at this time decide what role, if any, state commissions may play once we make a national assignment. That role will necessarily be determined on a case by case basis as we make national assignments. We clarify, however, that states will be allowed to continue to make local assignments that do not conflict with our national assignments.³

Allocation of Middle Tennessee 211 Code to United Way

On June 5, 2003, the United Way of Metropolitan Nashville (“United Way”) filed a petition in Docket No. 03-00383 for assignment of an N11 Code, specifically the 211 number code, to provide information and referral services to citizens in a number of counties in Middle Tennessee. National was notified of United Way’s petition and related proceedings but did not participate in Docket No. 03-00383.⁴ At an Authority Conference held on July 21, 2003, the panel assigned to that docket ordered the recall of the 211 allocation to National after finding that United Way met all the requirements to be allocated the 211 dialing code. In making this 211 assignment to United Way and in revoking the 211 allocation to National, the TRA acted under the authority reserved to the states by the FCC in its *Third Report and Order*.⁵

Consideration of 811 Code for One Call Operations

On August 29, 2003, the United States Department of Transportation (“DOT”) filed its *Petition for Rulemaking of the U.S. Department of Transportation for the Allocation of a Three-Digit Telephone Number to Access Excavation Damage Prevention (One Call) Services*

³ *Id.* at ¶ 43, n. 123. The FCC described the assignment designation and implementation process as follows: Assignment or designation involves announcement to the industry that a particular N11 code will be used for certain, defined purpose(s). This announcement alerts current users of the N11 code that nonconforming uses must cease as part of the implementation process. Implementation, on the other hand, may involve, in addition to discontinuing nonconforming uses, preparing and modifying switches to translate the N11 code and route the call accordingly, installing additional switching equipment, and installing or modifying software or other hardware.

⁴ On July 2, 2003 the Authority notified National by telephone of the United Way’s request. A copy of the United Way’s request was faxed to National the same day and the July 21, 2003 Authority Conference Agenda was also forwarded to National by U S Mail.

⁵ See *In Re Petition of United Way of Metropolitan Nashville for Allocation of an N11 Number (Abbreviated Dialing Code)*, Docket No. 03-00383, *Order Approving Reallocation of N11 Number (211) from National Telephone Enterprises to United Way of Metropolitan Nashville* (February 23, 2004).

Nationwide with the FCC, petitioning for assignment of a three-digit toll-free telephone number to access One Call services throughout the United States.⁶ Specifically, DOT requested the assignment of dialing code 344 or a substitute three digit number if 344 is not feasible.⁷

On December 4, 2003, the North American Numbering Council (“NANC”) filed a letter with the FCC supporting the use of 811 as a national number to access One Call services rather than the 344 code requested by DOT. NANC’s decision is based upon the fact that 811 can be implemented without the substantial cost or delay associated with other three-digit codes such as 344. Nevertheless, NANC did urge the FCC to communicate with Congress and other federal agencies that the use of 811 for One Call will mean no N11 code will remain for any other national purpose.

NATIONAL’S PETITION AND PETITION FOR RECONSIDERATION

National’s Petition

On February 23, 2004 National filed its *Advisory And Petition* (“Petition”) requesting the reassignment of an abbreviated dialing code in light of the allocation of the 211 code to the United Way.⁸ In the Petition, National stated that it had commenced the necessary steps to vacate its use of the 211 code in Nashville by May 1, 2004.⁹ National also stated that it had contacted BellSouth for the purpose of being transitioned to the 811 code and that it intended “to transition its services to the 811 code by May 1.”¹⁰ National asserted that its use of an 811 code would be identical to its use of the 211 code and that the public interest would be served by substituting the abbreviated dialing code 811 for 211.

⁶ *In The Matter of Petition for Rulemaking of the U S Department of Transportation for the Allocation of a Three-Digit Telephone Number to Access Excavation Damage Prevention (One Call) Services Nationwide*, CC Docket No 92-105 ¶ 43 (August 28, 2003)

⁷ *Id*

⁸ *Advisory And Petition*, p 1 (February 23, 2004)

⁹ *Id*

¹⁰ *Id*

On March 2, 2004, National filed a letter with the TRA amending its Petition by requesting a 611 code instead of an 811 code. National stated the following regarding this request:

It has been brought to the attention of National, Petitioner herein, that the process may begin by which the Federal Communications Commission ("FCC") may be asked to designate the Abbreviated Dialing Code, 811, for use by those responsible for posting the "Miss Utility" or "call before your dig" warnings and notifications. In light of this development, Petitioner amends its request to use 811 in place of the 211 ABD by specifying the ABD 611, also known to be available in Nashville.

At the same time however, Petitioner supplements its Petition as follows. Should there be developments affecting its substitution of the 611 ABD for the 211 ABD, then Petitioner would withdraw this amendment and retain its request for 811.

...

In addition, because all that is requested is a change in the ABD to be used by Petition for the same services it is currently conducting with ABD 211; and the costs that would be imposed on all parties, the Commission, BellSouth and Petitioner, it is respectfully requested that the necessity of a hearing on this request is unnecessary and burdensome. It is, therefore, requested that any hearing requirement that otherwise might apply be waived.¹¹

March 22, 2004 Authority Conference

The panel assigned to this docket considered National's Petition at the March 22, 2004 Authority Conference. Richard Cohen, President of National, appeared at the Authority Conference but declined to make a statement in support of the Petition. Mr. Cohen did express concern that National would be harmed by the removal of the 211 number without being reassigned the 811 code. Mr. Cohen also suggested that National should keep the number and that a four digit code be assigned to other N11 requests. The panel pointed out to Mr. Cohen that abbreviated dialing codes are a limited resource to be allocated for specific purposes and made the following findings.¹²

¹¹ *Amendment, Supplement and Waiver to Advisory and Petition*, pp 1-2 (March 2, 2004)

¹² Transcript of Authority Conference, p 39 (March 22, 2004)

At the time of the TRA allocation of the 211 code to National there were several N11 codes that were not in use. Since National received the 211 code, the FCC has issued orders designating both 311 and 211 for national use. The 611 code has been designated for repair information by cellular telephone service providers. The 811 code is the only remaining N11 code and it is being seriously considered for a national use.

The Authority found that the allocation of the 811 code to National would not be in the public interest because of the strong likelihood that the FCC will assign this code for national use as a One Call number. If the TRA were to assign 811 to National, and the FCC made the national 811 assignment, the TRA's actions would result in delaying the use of 811 as a One Call number in Tennessee. An allocation of 811 to National would result in having six months from the date of the notice from BellSouth within which to vacate the number. Regardless of whether or not the FCC assigns 811 to One Call on a national basis, 811 remains the only three-digit code available for any national use. The Authority concluded that the assignment of this code should be restricted to significant national uses, thereby precluding its assignment to National and the code should be available immediately if and when such use is required.

For these reasons and based on a review of the record in this docket the panel voted unanimously to deny National's Petition.

National's Petition for Reconsideration

On March 24, 2004, National filed a *Petition for Reconsideration and Expedited Consideration* ("Petition for Reconsideration"). In its Petition for Reconsideration, National argues that the possibility for national designation of an abbreviated dialing code number is not a sufficient basis to deny National's use of the number.¹³ National states that a national

¹³ *Petition For Reconsideration And Expedited Consideration*, p 3 (March 25, 2004)

designation of the 811 abbreviated dialing code would not affect its rights to use 811.¹⁴ National stresses that an abbreviated dialing code that is designated for a priority public purpose remains available for commercial use until a designated entity applies for and is granted authorization to activate the number,¹⁵ then it has “six months to find a substitute abbreviated dialing code or other number.”¹⁶

Glynn Blanton, Chief of the TRA Gas Pipeline Safety Division, in his Memorandum filed in this docket on April 8, 2004, explains that an abbreviated dialing code is necessary for the effectiveness of One Call systems under the Pipeline Safety Improvement Act of 2002.¹⁷ The One Call systems were formed to reduce the occurrences of property damage, personal injury, and loss of life from excavation damage to underground utility infrastructure.¹⁸ One Call systems provide “advance notice of excavation work to underground facility operators” to reduce the likelihood of excavation damage.¹⁹ According to Mr. Blanton, a national designation of an abbreviated dialing code is necessary because currently the effectiveness of One Call systems is hindered because they “cover different geographic areas and all have individual telephone numbers.”²⁰

Regarding the potential assignment of the 811 code to One Call systems, Mr. Blanton states:

At its November 5, 2003 meeting, the North American Numbering Council (NANC) recommended to the FCC the implementation of an N11 Code, specifically 811, as a nationwide, toll free, three-digit telephone number for One Call systems. In my opinion, the assignment by the FCC of the 811 dialing code for use by One Call systems is imminent because the assignment must be acted

¹⁴ *Id*

¹⁵ *Id*

¹⁶ *Id*

¹⁷ Memorandum of Glynn Blanton, Re Assignment of 811 Dialing Code to National One Call System Pursuant to the Pipeline Safety Improvement Act of 2002 (April 8, 2004) (hereinafter Memorandum of Glynn Blanton)

¹⁸ *Id* at 1

¹⁹ *Id*

²⁰ *Id*

on promptly in order to comply with the mandate of the Pipeline Safety Act of 2002. Therefore, the 811 dialing code must not be assigned by the Tennessee Regulatory Authority for a purpose that is not in conformance with the Pipeline Safety Act of 2002.²¹

April 12, 2004 Authority Conference

Ms. Loubna Haddad, counsel for National, appeared before the panel at the April 12, 2004 Authority Conference.²² Ms. Haddad advised the panel that the FCC had asked BellSouth to seek discontinuance authority from the FCC, under Section 214 of the Telecommunications Act (47 U.S.C. § 214),²³ for the 211 abbreviated dialing code and that, as a result, the Authority would not have to approve the assignment of an 811 code pursuant to the BellSouth tariff. According to Ms. Haddad, BellSouth, per the terms of its tariff, is required to work with National to find a different number when an abbreviated dialing code is recalled.²⁴ Ms. Haddad also proposed that the Authority could authorize the 811 abbreviated dialing code because the number has yet to be designated and allow National to use the “code in the meantime.”²⁵ Guy Hicks, counsel for BellSouth, informed the panel that if the FCC requires BellSouth to file a 214 petition for FCC approval of the discontinuance of the 211 number to National, there would be a delay in the United Way getting the 211 dialing code. Nevertheless, the FCC had not determined whether BellSouth would have to file a 214 Petition.²⁶

After hearing argument from counsel for National and considering the record in this docket, the panel affirmed its position that abbreviated dialing codes are a “scarce and valuable national resource” for which the Authority must be careful in determining “what the uses or even potential uses are.”²⁷ The panel noted that in 1999 when National was first assigned an

²¹ Memorandum of Glynn Blanton, p. 3 (April 8, 2004)

²² The panel granted Ms. Haddad’s request to appear pro hac vice

²³ Transcript of Authority Conference, p. 9 (April 12, 2004)

²⁴ *Id.*

²⁵ *Id.* at 10

²⁶ *Id.* at 12

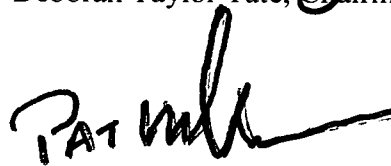
²⁷ *Id.* at 16.

abbreviated dialing code there were at least four such codes available whereas now only the 811 code is remaining. This fact is a significant change of circumstances from the time the Authority assigned the 211 code to National. Finding no basis for assigning the 811 code to National, particularly given that code's potential assignment to One Call systems, the panel voted unanimously to deny National's Petition for Reconsideration thereby upholding the Authority's denial of National's request for an 811 dialing code.

IT IS THEREFORE ORDERED THAT:

1. The *Petition and Advisory* of National A-1 Advertising, Inc. for assignment of an 811 or 611 abbreviated dialing code is denied.
2. The *Petition for Reconsideration and Expedited Consideration* filed by National A-1 Advertising, Inc. is denied.


Deborah Taylor Tate, Chairman



Pat Miller, Director


Sara Kyle, Director